

Rockport Board of Appeals
October 28, 2014
7:30 P.M.
Rockport Public Library
The Brenner Room
17 School Street, Rockport, MA

- 1) Call to order at 7:30 P.M. Members present Alan Battistelli (Chairing), Tacy D. San Antonio, Peter Bergholtz, Lars-Erik Wiberg, Joyce Fossa, John N. Rees and Michael Bace. Frederick Frithsen and Charles W. Christopher are absent.
- 2) Hearing of Richard A. Morrell, Jr. to appeal the decision of the Rockport Building Inspector at 43 Stockholm Avenue, Rockport.
 - a) Opened 7:30 P.M. Closed 7:33 P.M.
 - b) Members of the Board sitting are Alan Battistelli (Presiding), Peter Bergholtz, Joyce Fossa, Tacy San Antonio and Michael Bace.
 - c) Materials presented: general plan, site plan, floor plan and Google views.
 - d) Richard Morrell of 43 Stockholm Avenue withdrew the appeal.
 - e) The Chairman will send a letter accepting the withdrawal.
- 3) Approval of Minutes: September 30, 2014 Board of Appeals
 - a) Michael Bace made a motion to accept the minutes as presented. Peter Bergholtz seconded.
 - b) The motion passed unanimously with Alan Battistelli, Tacy D. San Antonio, Peter Bergholtz, Lars-Erik Wiberg, Joyce Fossa, John N. Rees and Michael Bace voting.
- 4) Old Business: Update on the Cape Ann Tool Company. Peter Bergholtz reported
 - a) The windows are in and they are doing stucco work.
 - b) The Tool Company has owned the bottom of the harbor since 1828 due to an act of the legislature.
 - c) Owner only has a permit to enclose and weather proof the machine shop.
- 5) Hearing of Richard A. Morrell, Jr. for a variance and/or special permit to construct a non-conforming 24 by 26 foot two-car garage at 43 Stockholm Avenue, Rockport.
 - a) Opened 7:40 P.M. Closed 8:07 P.M.
 - b) Members of the Board sitting are Alan Battistelli (Presiding), Peter Bergholtz, Joyce Fossa, Tacy San Antonio and Michael Bace.
 - c) Materials presented: general plan, site plan, floor plan and Google views.
 - d) Richard Morrell of 43 Stockholm Avenue, Rockport presented a brief history of the construction so far.
 - i) They originally asked for a building permit and were sent to the Conservation Commission.
 - ii) The Conservation Commission accepted their plans.
 - iii) Reapplied for a building permit and were refused as a certified site plan was needed. A scaled plan was needed.
 - iv) Submitted new plans to the Building Inspector and received a permit.
 - v) Construction was started.
 - vi) After construction was well on its way the Building Inspector contacted them a told them they had to cease construction as the garage was too close to the site line.
 - vii) The garage is 11 ½ feet from line where 15 is required.

- e) Joyce Fossa asked for the hardship that would be used to grant a Variance. Applicant replied:
 - i) About \$30,000 has already been tied up in construction.
 - ii) The foundation is already in.
 - iii) It is wetland area so garage can't be built on other side of the house.
 - iv) Would have changed the original plans if they had been told by the Building Inspector that 15 feet were needed.
 - v) 97-98% of the structure is legal.
- f) The plans submitted by the applicant do not meet the Board's requirements.
- g) Audience
 - i) Calandra Salo of 45 Stockholm Avenue
 - (1) Wishes to build a garage
 - (2) How would granting of this Variance affect her plans as it would put them closer to her property?
 - (3) Would she also be eligible for a Variance if needed?
 - ii) Ray MacKinnon of 40 Stockholm Ave
 - (1) Feels that the applicants did everything appropriately but were misled.
 - (2) The work to date should be considered legal.
 - (3) Not opposing this application.
 - iii) Erin MacDowell of 41 Stockholm Street agrees with what the previous speaker said and thinks they should get the Variance.
- h) Alan Battistelli asked the applicant to mark in red exactly where they were in the setback on the plans which the applicant did.
- i) Tacy San Antonio asked for the applicant to point to the location of the stream that was causing the wetland problems which he did.
- j) Peter Bergholtz stated that the Building inspector made a mistake by accepted plans that were not to scale.
- k) Michael Bace asked how long after construction started was it stopped.
- l) Applicant said that he received a permit in 2013 and was reissued a permit in 2014 to start construction. He started construction in July 2014 and was told to stop in September of 2014.
- m) Applicant submitted 25 letters of support from neighbors.
- 6) Hearing of James F. and Margaret M. Foster for a special permit and/or variance to construct a shed dormer on the north side of the building and to expand the existing dormer on the south side of the building on the existing non-conforming residence at 95A Granite Street, Rockport.
 - a) Opened 8:08 P.M. Closed 8:15 P.M.
 - b) Members of the Board sitting are Alan Battistelli (presiding), Peter Bergholtz, Tacy San Antonio and Joyce Fossa.
 - c) Materials presented: general plan, site plan, floor plan, elevations and photographs.
 - d) New site plan was submitted since last meeting.
 - e) James Foster of 95A Granite Street stated that the measurements are now correct.
 - f) The Board did a site visit and believe they now have the correct measurements.
- 7) Discussion of Hearings
 - a) Richard Morrell withdrawn
 - b) Richard Morrell
 - i) Michael Bace asked if Paul Orlando revoked the permit he issued and asked applicant to get a Variance.

- ii) Alan Battistelli mentioned the wetlands and use of a permit for 2 months.
- iii) Peter Bergholtz remarked
 - (1) Paul Orlando made a mistake.
 - (2) If we issue a Variance it will not be upheld if appealed.
 - (3) The permit was issued on an inaccurate plot plan.
- iv) Alan Battistelli remarked that a garage doesn't qualify for a hardship as no one needs a garage. The Board must keep past decisions on this in mind.
- c) Joyce Fossa made a motion to deny the application.
 - i) Peter Bergholtz seconded.
 - ii) The motion passed unanimously with Alan Battistelli, Peter Bergholtz, Joyce Fossa, Tacy San Antonio and Michael Bace voting.
- d) James and Margaret Foster
 - i) Doesn't seem to be a problem as they are maintaining the same footprint.
 - ii) John N. Rees commented on the fact that the building was going up a couple of feet.
 - iii) Peter Bergholtz moved to approve the petition and Joyce Fossa seconded.
 - iv) The motion passed unanimously with Alan Battistelli, Peter Bergholtz, Tacy San Antonio and Joyce Fossa voting.
- 8) New Business:
 - a) Peter Bergholtz made a motion to modify the first paragraph of the Board of Appeals Rules of Procedure Section 5.4 to read:
 - i) In each case the Board shall file a formal, written memorandum signed by the *Chairman or presiding member (electronic signatures are acceptable)* and setting forth the Board's findings and conclusions and the reason(s) for the Board's decisions and actions. Any vote or decision in the absence of such memorandum is only preliminary and tentative.
 - b) Michael Bace seconded and the motion passed unanimously with Alan Battistelli (Chairing), Tacy D. San Antonio, Peter Bergholtz, Lars-Erik Wiberg, Joyce Fossa, John N. Rees and Michael Bace voting.
- 9) Next Possible Meeting November 25, 2014
- 10) Motion to adjourn made by Peter Bergholtz and seconded by Michael Bace. The motion passed unanimously with Alan Battistelli, Tacy D. San Antonio, Peter Bergholtz, Lars-Erik Wiberg, Joyce Fossa, John N. Rees and Michael Bace voting.
Adjournment at 8:50 P.M.